



Metropolitan Transit District
550 Olive Street
Santa Barbara, CA 93101

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www.sbmtd.gov

Request for Proposal (RFP) for Marketing Services

PROJECT SUMMARY SHEET

Project Name: Marketing Services RFP

Solicitation Issuance Date: Friday, April 15, 2016

Project Description: Provide various marketing services to MTD as described in the enclosed *Scope of Work* on an as needed basis.

Project Location(s): MTD Administrative Facility, 550 Olive Street, Santa Barbara, CA 93101

Pre-Submittal Meeting Date/Time: Monday, April 25, 2016, at 10:00 AM (**Non-Mandatory**)

Pre-Submittal Meeting Location: MTD, 550 Olive Street, Santa Barbara, CA 93101

Requests/Clarifications Deadline: Friday, April 29, 2016, at 5:00 PM

Submittal Due Date/Time: Thursday, May 12, 2016, at 3:00 PM

Submittal Due Location: MTD Administrative Offices, 550 Olive Street, Santa Barbara, CA 93101
Reception Desk on 2nd Floor

Submittal Contents: Proposal; Bidder Information, References & Suppliers, Lobbying Certification, and Acknowledgement of Addenda forms. Submittals without these completed items, signed and dated where specified, may be considered non-responsive & may be rejected.

Contract Award Date: Tuesday, May 31, 2016 (anticipated)

Solicitation Contact: Ryan Gripp, Procurement Specialist, (805) 883-4241, rgripp@sbmtd.gov

Type of Solicitation: Negotiated procurement based on evaluation of qualifications to perform the scope of work and fair and reasonable pricing

Type of Contract: Indefinite Delivery-Indefinite Quantity with Fixed Price Delivery Orders

Estimated Contract Amount: Not to exceed \$300,000 for the three (3) year base period

Contract Period: Three (3) years projected to begin June 2016; at the end of the three (3) year period, MTD reserves the right to extend the contract in one year increments for up to two (2) years

Licenses Required: Current licenses as required by the State of California for each person performing under a contract based on this RFP

Check MTD's website at <http://www.sbmtd.gov/business-and-employment/active.html> for updates.

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SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
Request for Proposal for Marketing Services
SOLICITATION INSTRUCTIONS

1. PRE-SUBMITTAL ACTIVITIES

1.1 PROJECT DESCRIPTION

The Santa Barbara Metropolitan Transit District (MTD) is issuing this *Request for Proposal (RFP) for Marketing Services* to engage the services of a qualified marketing firm on an as-needed basis for a three-year period anticipated to begin in June 2016, with two optional one-year extensions.

1.2 RFP CONTENTS & CONTRACT DOCUMENTS

These *Solicitation Instructions* provide direction on preparing submittals and describe the evaluation, review and contract award process. Attached are required forms and certifications to be completed and included as part of the submittal. The RFP consists of the following items and is available on the MTD website at <http://www.sbmtd.gov/business-and-employment/active.html>.

- ☐ *Solicitation Instructions* which is the document presently being read
- ☐ Various attached forms to be completed as part of the proposal submittal process
- ☐ *Scope of Work* which specifies the type of services and projects that MTD anticipates during the contract term
- ☐ *MTD Master Agreement* which will serve as the contract between MTD and the winning firm
- ☐ *Federal Transit Administration Contract Provisions* covering terms and conditions for federally funded projects

Bidders should be certain to read all documents in this RFP in order to prepare proposals correctly and be fully aware of the contractual terms and conditions. Failure of a bidder to follow instructions may result in rejection or disqualification of its proposal, and lack of knowledge of the contract terms shall not excuse it from its obligations

1.3 PRE-SUBMITTAL MEETING (NON-MANDATORY)

There is a non-mandatory pre-submittal meeting to review the RFP process and speak with MTD staff currently conducting marketing activities for the District. The meeting will be at 10:00 AM on Monday, April 25, 2016 in the downstairs auditorium at MTD's Administrative Offices located at 550 Olive Street, Santa Barbara. This will be the only opportunity for bidders to engage MTD staff in person.

1.4 COMMUNICATIONS, REQUESTS & CLARIFICATIONS

MTD will consider requests for clarifications or changes to the RFP until Friday, April 29, 2016, at 5:00 PM. To be considered, such communications must be via email to Ryan Gripp at rgripp@sbmtd.gov. Change requests must be provided with sufficient information supporting the request to allow MTD to make a fair and reasonable determination.

1.5 RFP MODIFICATIONS & ADDENDA

MTD reserves the right to amend this RFP through written addenda. No other form of communication with any officer, employee or agent of MTD shall be binding upon MTD. Addenda will be posted to the MTD website at <http://www.sbmtd.gov/business-and-employment/active.html> and concurrently sent via email to all parties on the interested party list or which previously received the RFP. Failure of a bidder to receive any addendum shall not relieve it from any obligation under the RFP as clarified or modified.

1.6 RFP & CONTRACT TERMINOLOGY

In this solicitation and the resultant contract, MTD may interchangeably use the terms “bid,” “offer,” “proposal” or “submittal” to mean your response to this solicitation. Also, MTD may interchangeably use the terms “bidder,” “offeror,” “submitter” or “proposer” meaning you as the responder to this solicitation. In addition, the terms “successful bidder,” “successful offeror,” “successful proposer,” “successful submitter,” “supplier,” “vendor,” “consultant,” and “firm” have the same meaning as the party to which a contract is awarded.

2. SUBMITTAL PREPARATION & SUBMISSION

2.1 MTD FORMS

Bidder Information—Submittal shall include the fully completed *Bidder Information* form included in this RFP.

References & Suppliers—Submittal shall include the *References & Suppliers* form included in this solicitation. Note that only the “Work References” and “Credit References” sections are required for this solicitation. **Please be certain to list contact names and phone numbers that are accurate and current.**

Lobbying Certification—Submittal shall include the signed and dated *Lobbying Certification* form included in this RFP.

Acknowledgement of Addenda—Bidder shall acknowledge either receipt of each Addendum or that there were no addenda by including in its bid the fully completed and signed *Acknowledgement of Addenda* form in this IFB. **Failure to include the signed Acknowledgement of Addenda form will render the bid non-responsive and it will be rejected.**

2.2 BIDDER-PREPARED DOCUMENTS

Proposal—A submittal indicating the capability of the offeror to perform the attached *Scope of Work* is required. It shall include the information and be formatted as follows:

- Cover Letter. Letter shall be signed by an officer authorized to bind the offeror contractually and shall address the below matters (**Review of contract documents by legal counsel is advised**).
 - Offeror’s interest and willingness to enter into a contract with MTD to perform as-needed marketing services as described in the attached *Scope of Work*; and offeror’s commitment to the effect that it would exert its “best efforts” in fulfilling its responsibilities therein.
 - Offeror’s willingness to accept the contract terms and conditions included in the *MTD Master Agreement*, the *Federal Transit Administration Contract Provisions*, and the *Scope of Work*. If there are any contract terms that the offeror will not accept or proposes modifications to, the specifics of such should also be addressed in the cover letter or an attachment thereto. MTD is limited in its ability to alter the terms and will assess whether it would be able to contract with the offeror under the offeror’s proposed contract revisions.
 - Offeror’s ability and willingness to obtain insurance meeting the requirements indicated in paragraph 18 of the *MTD Master Agreement*.
- General Background. Include the date your firm went into business, its growth pattern, types of services provided, number of personnel employed, number of personnel specializing in the type of labor required for services of the type described under the *Scope of Work*, and number of personnel specializing in working with transit agencies, and/or public agencies in general. Identify organization affiliations and licenses held which pertain to the work specified in support of MTD.

- Firm Experience and Expertise. Provide a detailed explanation of the experience and expertise of the firm to include that of a general nature, expertise related to public agencies, and that which pertain to the type of projects described in the *Scope of Work*.
- Individual Experience and Expertise. Provide a detailed explanation of the experience and expertise of personnel the submitter proposes to use to support MTD in meeting the requirements of a contract resulting from this RFP. Include resumes for key personnel mentioned in this section. Key personnel are expected to be committed for the duration of the base contract period. Replacement of such personnel will not be permitted without prior consultation with and approval from MTD.
- Subcontractors. List any subcontractors offeror may engage to provide support for any projects outlined in the *Scope of Work* that offeror's firm is unable to execute with in-house resources. Include experience and expertise of subcontractor's firm, and that of their personnel anticipated to be working on MTD projects.
- Work Sample. Include a minimum of one (1) sample project, and not more than (3) sample projects, that fall under one of the five project categories listed in the *Scope of Work*. If offeror worked with another firm on the sample project(s), provide a description of offeror's role in the project.
- Additional Relevant Information (Optional). Provide additional relevant information that may be helpful in the selection process (not to exceed 2 double-spaced pages). This information is optional.
- Price Proposal. Provide a fee schedule(s) indicating billable labor, service, and material classifications and unit rates for each year of the contract period. Labor unit rates include fringe benefits, direct and indirect costs, and any other administrative fees. Label each fee schedule with the appropriate contract year (e.g. "Year 1," "Year 2," "Year 3"). If only providing one fee schedule for the base period title the document accordingly (e.g. "Years 1 – 3"). The fee schedule(s) must include the requisite labor, service, and material classifications and unit rates for completing assignments listed in the five project categories on the *Scope of Work*.

2.3 SUBMITTAL LOCATION & DEADLINE

Proposer shall submit a total of seven (7) complete sets of its proposal. This shall include one (1) set marked as original, five (5) complete copies, and one (1) electronic set (flash drive or CD) submitted in a non-transparent, sealed envelope or appropriate packaging plainly marked on the exterior with the name of the bidder and the following: "Marketing Services RFP." If using US Mail or a delivery service, submittals must still be enclosed in the specified packaging within any delivery service packaging. Submittals shall be delivered to:

Santa Barbara Metropolitan Transit District
Marketing Services RFP
550 Olive Street
Santa Barbara, CA 93101

If hand delivered, submittals should be taken to the reception desk on the 2nd floor of the building.

Submittals will be accepted until 3:00 PM, local time, on Thursday, May 12, 2016. Unless due to the fault of MTD, submittals received after such time cannot be considered and will be returned to the submitter unopened. There will be no public opening of submittals at the deadline or otherwise.

2.4 WITHDRAWAL OF SUBMITTALS

A bidder may withdraw a submittal any time prior to the submittal deadline by submitting a written request executed by the bidder's authorized representative. Any such withdrawal does not prejudice the right to resubmit a submittal by the submittal deadline.

2.5 SUBMITTAL STIPULATIONS

Submittals submitted as a result of this solicitation become the property of MTD. MTD will not pay any cost incurred by a bidder resulting from preparation or delivery of its submittal. MTD reserves the sole right to review, accept, or reject submittals; or to cancel this solicitation in whole or in part if it is in MTD's best interest to do so. Submittals will remain valid for 90 calendar days following the submittal due date.

3. EVALUATION

3.1 PROPOSAL EVALUATION

MTD will evaluate submitted proposals to determine the most qualified offeror using the following criteria which are listed in relative order of importance:

- 1) Demonstrated successful experience performing projects similar to those in the *Scope of Work*.
- 2) Experience and expertise of personnel proposed to work on anticipated MTD projects.
- 3) Experience working with transit agencies and/or public entities.
- 4) Fair and reasonable labor and material costs listed in "Price Proposal."

As part of the evaluation process, MTD will call references and may conduct interviews with proposer(s) it determines as likely to be the most qualified. Such interviews are for information gathering and clarification. MTD may conduct interviews in person or by phone. Any proposer requested to be interviewed shall make its best effort to be available within three (3) business days of such request. MTD reserves the right to award a contract without interviews and/or negotiations if deemed unnecessary to determine the most qualified, responsible offeror with a fair and reasonable price proposal.

3.2 BIDDER RESPONSIBILITY

When MTD determines the offerors within the competitive range (i.e. the offerors who submitted the most highly rated proposals), MTD will assess their responsibility, which in this solicitation is defined as satisfactory performance in previous contracts and having the financial capacity to undertake the project. MTD will use the reference information provided in the submittal and other information, as needed, for this determination. If an offeror within the competitive range is not determined to be responsible, it will no longer be considered.

3.3 PRE-AWARD DELIVERABLES

Upon determination of the most qualified, responsible offeror with a fair and reasonable price proposal and prior to consideration of contract award, MTD will request the following from the offeror:

Insurance Certificate—A certificate of insurance showing the coverage types and dollar limits stipulated in paragraph 18 of the *MTD Master Agreement*.

Business License—To carry out the work, a City of Santa Barbara business license is required. Provide a photocopy of the bidder's City business license. If one is not currently held, a business license will need to be obtained and a copy provided to MTD prior to award.

4. CONTRACT AWARD

Upon determination of the most qualified, responsible offeror with a fair and reasonable price proposal satisfactorily providing the items required in Sections 2.1, 2.2, and 3.3 above, staff will prepare a recommendation for contract award to be considered by either the MTD General Manager or the MTD Board of Directors.

If the award recommendation is approved, it is the intent of MTD to execute the contract documents as soon as practicable after such award. The contract will be composed of the *Federal Transit Administration Contract Provisions*, the *MTD Master Agreement*, the *Scope of Work*, and relevant portions of the Contractor's submittals and price proposal.

5. OPTION PROVISION

The option for (2) one-year contract extensions may be exercised at the sole discretion of MTD. To exercise the option, MTD will request a price proposal for a one-year contract extension (6) months prior to the termination of the existing contract. Based upon the outcome of price negotiations, MTD will determine whether to move forward with a one-year contract extension.

6. PROTEST PROCEDURES

MTD has established procurement protest procedures to ensure uniform, timely, and fair consideration of complaints received by MTD concerning its procurement activities. Such procedures are available on MTD's website at the following link: <http://www.sbmttd.gov/business-and-employment/purchasing.html>

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Proposal for Marketing Services

BIDDER INFORMATION

General Information

Business Name of Bidder: _____

Business Type: ☐ Corporation (State of Incorporation: _____) ☐ Partnership
☐ Sole Proprietorship ☐ Other: _____

Business Federal Tax ID Number: _____ (provide SSN if sole proprietorship)

Corporate Headquarters

Street Address: _____

City: _____ State: _____ Zip Code: _____

Local Office ☐ (check box at left & leave below blank if the local office is the HQ or there is no local office)

Street Address: _____

City: _____ State: _____ Zip Code: _____

Authorizing Contact (person authorized to bind the firm contractually, including change orders)

Name: _____ Title: _____

Location: ☐ HQ ☐ Local Office ☐ Other: _____

Telephone: _____ Cell: _____ E-Mail: _____

Project Manager (anticipated primary contact during implementation of projects)

Name: _____ Title: _____

Location: ☐ HQ ☐ Local Office ☐ Other: _____

Telephone: _____ Cell: _____ E-Mail: _____

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Proposal for Marketing Services

REFERENCES & SUPPLIERS

Business Name of Bidder: _____

Credit References

Include your primary bank and two firms that you **currently** purchase materials or services from on credit:

Bank Name: _____ Contact: _____ Phone: _____

Vendor Name: _____ Contact: _____ Phone: _____

Vendor Name: _____ Contact: _____ Phone: _____

Work References

Include three recent clients for which you provided **similar services** to the project work:

Client Name: _____ Contact: _____ Phone: _____

Client Name: _____ Contact: _____ Phone: _____

Client Name: _____ Contact: _____ Phone: _____

Suppliers

Provide the following information for any **significant** suppliers to be used in the project:

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Proposal for Marketing Services

LOBBYING CERTIFICATION

The undersigned Contractor certifies that to the best of his or her knowledge and belief:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Authorized Official Signature

Date of Signature

Authorized Official Name

Authorized Official Title

Business Name of Bidder

(Signer must match authorized official shown on Bidder Information Form)

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Proposal for Marketing Services

ACKNOWLEDGEMENT OF ADDENDA

The undersigned acknowledges the Bidder's receipt of the following addenda to this RFP and has incorporated information or changes in said addenda within its submittal (if no addenda were received, write "None" in the first blank):

Addendum No. _____ dated _____

Addendum No. _____ dated _____

Addendum No. _____ dated _____

Addendum No. _____ dated _____

Note: It is the Bidder's responsibility to ensure it receives all addenda which are posted on the MTD website at <http://www.sbmt.d.gov/business-and-employment/active.html>.

Authorized Official Signature

Date of Signature

Authorized Official Name

Authorized Official Title

Business Name of Bidder

(Signer must match authorized official shown on Bidder Information form)

Santa Barbara Metropolitan Transit District
Marketing Services
Scope of Work

- I. Background Overview—The Santa Barbara Metropolitan Transit District (“MTD”) is a California special district providing public transportation to the South Coast of Santa Barbara County. MTD bus service is key to enabling thousands of people to get to and from work, school, medical facilities, etc. on a daily basis. As a public service provider, it is imperative that MTD have a robust marketing platform to communicate effectively with passengers and the community as a whole.
- II. General Description—The Contractor shall provide marketing services to MTD on an as-needed, project-by-project basis. MTD is looking for a Contractor to assist with projects in various concentrations of general marketing services including: strategic marketing services, public relations management, creative services, social media, and website development. In collaboration with MTD staff, the Contractor will serve as MTD’s expert advisor on all matters pertaining to marketing and public relations. The Contractor will assist with developing, implementing, and evaluating communications and marketing objectives that meet specific goals and key performance indicators and construct a plan for achieving them. Finally, the Contractor will assist in identifying additional opportunities that will strengthen MTD’s marketing program.
- III. Anticipated Projects/Assignments—Although specific projects/assignments are not determined with certainty nor guaranteed, it is anticipated that such work will include or be similar to the following:
 - 1) Strategic Marketing Services:
 - Provide strategic campaign support, including planning, development, execution, and multi-channel outreach.
 - Work with MTD staff to plan launch events to engage current and potential transit users.
 - Assist with developing benchmarks for measuring the success of MTD’s communications and marketing programs and identify tools for ongoing evaluation. Make recommendations for improvement.
 - 2) Public Relations Management:
 - Manage public relations sources to accomplish the objectives as indicated by MTD.
 - Assist in the development of news releases, editorials, annual reports, newsletters, briefs and feature articles.
 - Recommend and assist with other public relations, publicity efforts, and related services as requested by MTD.
 - 3) Creative Services:
 - Perform media production services such as creative concept, graphic design, photography, content development for digital, print, and collateral material, copyright, etc.
 - Perform film, video, radio, and other mainstream media production and post-production, including: creative concept, development, casting, talent/ownership negotiations, shooting, editing, dubbing, and distribution.
 - Advise MTD on maintaining brand consistency and make recommendations related to brand advancement, including the development of branded materials.
 - 4) Social Media:
 - Establish a consistent social media identity to communicate with transit users and stakeholders about daily operations, service changes, implementation of new technology, etc., and to create a forum for receiving feedback and providing education about MTD services.

- Provide expertise in the execution and measurement of social media driven contests and campaigns.
- Provide input on all current and evolving social media channels, including knowledge of how and whether to incorporate them into the marketing strategy.
- Develop engaging graphic and written content for all social media channels.

5) Website Development:

- Provide website design and content recommendations and carry out any necessary changes, which may include a full or partial redesign of existing content.
- Website services may include backend database design, support, and maintenance.

IV. Procedure to Order Services—When marketing services are needed, MTD will issue to the Contractor a Request for Quotation (RFQ) that will include a description of the preliminary project scope of work. Such requests will typically be for a fixed price quote, although other contract types may be considered. In response, the Contractor shall provide MTD with a quote for the project work that includes a price breakdown of: professional services by labor category and hours; materials (e.g., print materials) or other services by type and quantity; and a description and price for any other components of the quote. Other than the labor or material unit prices fixed by the Marketing Services contract, components of the quote are subject to review by MTD. Additional information may be requested by MTD to assist in evaluating that the quote is fair and reasonable.

V. Complete Projects—This Scope of Work does not include a complete description of all services or processes that may be required to carry out each ordered project or task. This Scope of Work is provided only for matters considered key to the project. Except as described herein, Contractor shall provide all marketing services necessary to properly complete each ordered project.

Santa Barbara Metropolitan Transit District

Marketing Services

MASTER AGREEMENT with [insert contractor name in caps]

THIS AGREEMENT is entered into by and between Santa Barbara Metropolitan Transit District, an incorporated transit district under Sections 95000, et seq. of the California Public Utilities Code ("MTD"), and [insert contractor name], a [insert state name] [insert business type] ("Contractor"), at Santa Barbara, California, as of the later date set forth below the signatures executing this Agreement.

WHEREAS:

- A. MTD desires to engage Contractor to provide MTD with a range of professional marketing services (the "Project");
- B. Contractor represents that it has the knowledge and experience to carry out the Project, and desires to carry out the Project pursuant to the terms and conditions hereof, and;
- C. Based upon the representations made by Contractor, MTD desires to retain the services of Contractor to carry out the aforesaid Project, upon the within terms and conditions.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

- 1. Effect of Recitals. The foregoing recitals are hereby made express provisions of this Agreement.
- 2. FTA Provisions. The Project is funded in part by the Federal Transit Administration of the U.S. Department of Transportation and, as such, this Agreement is subject to the terms and conditions contained in *Federal Transit Administration: Contract Provisions* which is attached hereto as Exhibit "A" and incorporated herein by this reference.
- 3. Public Works Provisions. Not applicable to this agreement.
- 4. Scope of Work. MTD has heretofore issued on April 15, 2016 the scope of work contained in Request for Proposal (RFP) for Marketing Services, a true copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.
- 5. Submittal and Price Proposal. Contractor has heretofore submitted on May 12, 2016, its proposal, including required forms; and on [date] its price proposal to carry out the Project, true copies of relevant parts of which are attached hereto as Exhibit "C" and incorporated herein by this reference.
- 6. Order of Control. Contractor shall carry out the Project described in Exhibit "B" to this Agreement for the pricing quoted in Exhibit "C". All work and services shall be performed according to and controlled by the terms and provisions of this Agreement and the exhibits attached hereto. In the event of any conflict between the contract documents, the following order of control shall prevail: MTD Master Agreement, Exhibit "A", Exhibit "B", Exhibit "C".
- 7. Estimated Contract Amount and Delivery Order Pricing. The not to exceed amount of this indefinite delivery/indefinite quantity contract is \$300,000. This amount is a ceiling only and the actual amount may be less depending on actual services ordered by MTD and provided by the Contractor. Individual orders for specific projects will be priced in accordance with Exhibits "A", "B", and "C".
- 8. Payment Schedule. Contractor shall submit monthly invoices to MTD for services rendered or approved expenses incurred for such month. Invoices shall indicate a breakdown for each project invoiced including a description of services provided, Contractor and subcontractor/sub-consultant labor hours by category or individual, materials and supplies, etc. Payment from MTD shall be made to Contractor no later than thirty (30) days after receipt of a valid invoice which shall be sent to: Santa Barbara MTD, Attn: Ryan Gripp, 550 Olive Street, Santa Barbara, CA 93101.

9. Taxes. MTD is exempt from the payment of Federal Excise and Transportation taxes. Unless specified otherwise in the Agreement, MTD is subject to applicable California Sales Tax for Santa Barbara County which shall have been included in the Contractor's proposal price and shall be included on the Contractor's invoice.

10. Project Schedule. To be established for each delivery order.

11. Delivery & Freight. Unless specified otherwise in Exhibit "A" or "B", any item provided under this Agreement shall be delivered FOB Santa Barbara to 550 Olive Street, Santa Barbara, CA 93101. Any Project freight and delivery charges shall have been already included in the Contractor's price and shall not be paid otherwise by MTD.

12. Title & Risk of Loss. The Contractor shall have title to and bear the risk of any loss of or damage to any item provided hereunder until delivered and, if applicable pursuant to this Agreement or standard industry practice, installed or otherwise set up for usage. Upon such delivery and applicable installation and setup, title shall pass from the Contractor to MTD, and the Contractor's responsibility for loss or damage shall cease, except for loss or damage resulting from the Contractor's negligence. Such passing of title shall not constitute acceptance of an item by MTD. The Contractor shall further warrant that the title to any item provided hereunder is free from all claims, encumbrances and liens.

13. Damages. All losses or damages arising from any unforeseen circumstances, either natural or artificial, which may be encountered by the Contractor during the performance of the Project under this Agreement shall be sustained solely by the Contractor. This provision shall also apply to losses or damages resulting from any act or omission not authorized by this Agreement on the part of the Contractor or any agent or person employed by the Contractor.

14. Defective, Damaged or Noncompliant Work. Any items, services, work or systems acquired pursuant to this Agreement found to be defective, damaged or non-compliant with the scope of work at the time of delivery or installation shall be replaced by the Contractor without additional cost to MTD. If the Contractor should fail to promptly comply with any order to replace or repair any defective items, services, work or systems, MTD shall have the authority to deduct the cost of such replacement or repair from any compensation due or to become due to the Contractor. Nothing in this section shall limit or restrict any warranty provisions of this Agreement or any exhibits hereto.

15. Acceptance. Deliverables to be furnished by the Contractor to MTD pursuant to this Agreement may be subject to acceptance by MTD. If so, MTD shall inspect such deliverables to determine acceptability no later than ten (10) calendar days after said deliverables are received. Acceptance shall occur when it is determined by MTD that deliverables provided are in compliance with the terms of this Agreement.

16. Warranty. The Contractor shall warrant to MTD that, for five (3) years after MTD's full acceptance of items, services, work or systems, each shall conform with the requirements hereof and be free of defects. In addition to other remedies which may be available, MTD may at its option return any non-conforming or defective items to the Contractor and/or require correction or replacement of said item when the defect is discovered, all at the Contractor's risk and expense. If MTD does not require such correction or replacement of non-conforming or defective items, the Contractor shall repay such portion of the payment specified herein or such additional amount as is equitable under the circumstances. The rights of MTD hereunder are in addition to, and not limited by, the Contractor's standard warranties. Acceptance of items, services, work or systems by MTD, or payment therefor, shall not relieve the Contractor of its obligations thereunder.

17. Changes. Any changes or modifications to this Agreement must be in writing, and agreed to by both parties.

18. Insurance.

a. Contractor's Insurance Representations to MTD.

i. It is expressly understood and agreed that the insurance coverages required herein:

A. represent MTD's minimum requirements and are not to be construed to void or limit Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages Contractor should or should not maintain for its own protection; and

B. are being, or have been, obtained by Contractor in support of Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy, or failure of any insurance company carrying insurance of Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate, or waive any of the provisions of this Agreement.

ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under this Contract. If Contractor shall fail to remedy such breach within five (5) business days after written notice by MTD, Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to MTD from such breach, unless a written waiver of the specific insurance requirement(s) is provided to Contractor by MTD. In the event of any failure to Contractor to comply with the provisions of this portion of the Agreement, MTD may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Contractor, purchase such insurance, at Contractor's expense, provided that MTD shall have no obligation to do so and if MTD shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

b. Conditions Affecting All Insurance Required Herein.

i. Cost of Insurance. All insurance coverage shall be provided at Contractor's sole expense.

ii. Maintenance of Insurance. All insurance coverage shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement.

iii. Status and Rating of Insurance Company. All insurance coverage shall be written through insurance companies admitted to do business in California and with a Best's Financial Strength Rating of A- or better, as shown in the on-line version of Best's Rating & Criteria Center.

iv. Restrictive, Limiting, or Exclusionary Endorsements. All insurance coverage shall be provided to Contractor Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage in any manner without the prior express written approval of MTD.

v. Limits of Liability. The limits of liability may be provided by a single policy of insurance or by a combination of primary and umbrella policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.

vi. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage. In the event of cancellation, nonrenewal, or material reduction in coverage affecting the certificate holder, thirty (30) days prior written notice shall be given to the certificate holder by certified mail, return receipt requested, except in the event of cancellation for nonpayment, in which event fifteen (15) days prior written notice shall be given. If insurer will not include in its coverage such written notifications, it shall be incumbent upon Contractor to comply with such written notification requirements.

vii. Additional Insured Status. Additional insured status shall be provided in favor of MTD and its officers, employees and agents, including consultants, on all liability insurance required herein except workers' compensation/employer's liability and the certificate of insurance shall reflect same. Such additional insured coverage shall be primary to and shall seek no contribution from all insurance available to MTD, with MTD's insurance being excess, secondary, and noncontributing.

viii. Waiver of Subrogation. All insurance coverage carried by Contractor required herein shall provide a waiver of subrogation in favor of MTD for all loss covered by such insurance, and Contractor waives all rights of action against MTD for such loss.

ix. Primary Liability. All insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to MTD, with MTD's insurance being excess, secondary, and noncontributing. Where necessary, coverage shall be endorsed to provide such primary liability, and the certificate of insurance shall reflect same.

x. Deductible/Retention. All insurance required for this project shall have a maximum deductible or self-insured retention of \$10,000 per policy.

xi. Claims Against Aggregate. MTD must be notified in writing by Contractor at MTD's address set forth herein immediately upon knowledge of possible claims against Contractor that might cause a reduction below seventy-five (75%) of any aggregate limit of any primary policy.

c. Commercial General Liability Insurance.

i. Coverage. Such insurance shall cover liability arising out of all locations and operations of Contractor, including but not limited to liability assumed under this Agreement (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limit of liability.

ii. Form. Commercial General Liability Occurrence form, at least as broad as an unmodified ISO CG 00 01 10 93 or its equivalent.

iii. Amount of Insurance. Coverage shall be provided with limits of not less than:

A. Each Occurrence Limit	\$1,000,000
B. General Aggregate Limit	\$2,000,000
C. Product-Completed Operations Aggregate Limit	\$2,000,000
D. Personal and Advertising Injury Limits	\$1,000,000
E. Fire Damage (any one fire)	\$50,000
F. Medical Expense (any one person)	\$5,000

iv. Required Endorsements.

A. Additional Insured status as required in 18(b)(vii), above.

B. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.

C. Personal Injury Liability: The personal injury contractual liability exclusion shall be deleted.

D. Primary Liability, as required in 18(b)(ix), above.

E. Waiver of Subrogation, as required in 18(b)(viii), above.

F. Continuing Commercial General Liability Insurance: Contractor shall maintain such insurance in identical coverage, form, and amount, including required endorsements, for at least three (3) years following the date of acceptance by MTD of the last bus built pursuant to this Agreement.

d. Auto Liability Insurance.

i. Coverage. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned).

ii. Form. Business Auto Form (at least as broad as an unmodified ISO CA 0001 or its equivalent).

iii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000, combined single limit.

iv. Required Endorsements.

A. Additional Insured status as required in 18(b)(vii), above.

B. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.

C. Waiver of Subrogation, as required in 18(b)(viii), above.

e. Workers' Compensation/Employer's Liability Insurance.

i. Coverage. Such insurance shall cover liability arising out of Contractor's employment of workers and anyone for whom Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.

ii. Amount of Insurance. Coverage shall be provided with a limit of not less than:

A. Workers' Compensation:	Statutory limits
B. Employer's Liability:	\$1,000,000 each accident and disease.

iii. Required Endorsements.

A. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.

B. Waiver of Subrogation, as required in 18(b)(viii), above.

f. Professional Errors & Omissions Liability Insurance.

i. Coverage. Such insurance shall cover claims alleged to arise out of the negligent performance of Contractor's professional services and include Technology Errors and Omissions.

ii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000 annual aggregate.

g. Other Insurance. MTD shall have the right, exercisable in its sole judgment at any time by giving prior written notice thereof to Contractor, to require Contractor to increase the limit and coverage amount of any insurance Contractor is required to maintain pursuant to this Agreement to an amount that MTD may, in its sole judgment, deem reasonably sufficient; and purchase other insurance and/or endorsement in such amounts or types as MTD may reasonably require from time to time.

19. Bonding. Not applicable to this agreement.

20. Termination. For applicable terms, refer to Paragraph 21 (Termination) in *Federal Transit Administration: Contract Provisions* which is attached hereto as Exhibit "A".

21. Liquidated Damages. Not applicable to this agreement.

22. Infringement of Patents. The Contractor agrees that it will, at its own expense, defend all suits and proceedings instituted against MTD and pay any award of damages assessed against MTD in such suits or proceedings, insofar as the same are based upon any claim that the items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, constitutes an infringement of any legal United States copyright or patent. MTD agrees that it will give the Contractor prompt notice in writing of the institution of the suit or proceeding and permits the Contractor through its counsel to defend the same and gives the Contractor all information, assistance and authority necessary for the Contractor to do so. In case said items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, is in such suit held to constitute infringement and use of same is enjoined, the Contractor shall, at its own expense and at its option, either procure for the MTD the right to continue using said items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

23. Rights in Data, Definitions. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. Subject data includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software (including, but not limited to, source codes), engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration. *MTD Rights.* MTD reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for MTD purposes, any subject data or copyright. As used in the previous sentence, "for MTD purposes," means use only for the direct purposes of MTD. Without the copyright owner's consent, MTD may not extend its license to any other party. *Public Information.* When MTD awards a contract for experimental, developmental, or research work, it is MTD's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless MTD determines otherwise, MTD and the Contractor performing experimental, developmental, or research work required by the contract agrees to permit MTD to make available to the public, either MTD's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data and shall be delivered as MTD may direct.

24. Indemnification. The Contractor shall, to the extent permitted by law protect, indemnify, defend, and hold MTD and its officers, employees and agents, including consultants, harmless from and against any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, expenses, and suits or actions or proceedings, including reasonable expenses, costs and attorneys' fees incurred by MTD and its officers, employees and agents, including consultants, in the defense, settlement or satisfaction thereof, for any injury, death, loss or damage to persons or property of any kind whatsoever, arising out of, or resulting from, the acts, errors or omissions of the Contractor, including acts, errors or omissions of its officers, employees, servants, agents, subcontractors and suppliers; and upon receipt of notice and if given authority, shall settle at its own expense or undertake at its own expense the defense of any such suit, action or proceeding, including appeals, against the MTD and its officers, employees and agents, including consultants, relating to such injury, death, loss or damage. Each party shall promptly notify the other in writing of the notice or assertion of any claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder. The Contractor shall have sole charge and direction of the defense of such suit, action or proceeding. The MTD shall not make any admission which might be materially prejudicial to the Contractor unless the Contractor has failed to take over the conduct of any negotiations or defense within a reasonable time after receipt of the notice and authority above provided. The MTD shall at the request of the Contractor furnish to the Contractor all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so. The MTD shall have the right to be represented therein by advisory counsel of its own selection at its own expense. The obligations of the Contractor under this clause shall not extend to circumstances where the injury, or death, or damages is caused solely by the negligent acts, errors or omissions of the MTD, its officers, employees, agents or consultants, including negligence in the preparation of the Contract documents, or the giving of directions or instructions with respect to the requirements of the Contract by written order.

25. Notice. Notices in connection with this Agreement shall be made in writing and may be delivered either personally, by governmental postal service (regular, certified or registered), by private delivery service, or by email. Receipt shall be deemed to have occurred when actually made to the party or its designated agent. Such notices shall be properly addressed to the intended party as follows:

MTD:

Jerry Estrada, General Manager
Santa Barbara Metropolitan Transit District
550 Olive Street
Santa Barbara, CA 93101
Email: jestrada@sbmtd.gov

CONTRACTOR:

[insert authorized official name & title]
[insert contractor name]
[insert contractor street address]
[insert contractor city, state & zip]
[insert contractor email]

26. Attorney Fees and Costs. In the event of a controversy (including, but not limited to arbitration or a criminal or civil filing in a Federal Court or a court of any of the United States) between the parties with respect to the enforcement or interpretation of this Agreement, the prevailing party in such controversy shall be entitled to receive, in addition to such other award as the court may deem appropriate, full reimbursement for its court costs and reasonable attorney fees incurred therein.

27. Negation of Partnership. This Agreement creates a relationship between two independent contractors and does not, nor may it be interpreted to, create the relationship of joint venturers, partners, employee/employer, or any other business relationship.

28. No Assignment. This Agreement is not assignable by either party, and any attempt by either party to assign its obligations hereunder shall be void ab initio at the election of the other party, which election may be made by written notice within ten (10) days of the non-assigning party's receipt of actual knowledge of such attempted assignment. Notwithstanding the foregoing, however, at the election of the other party, the obligations and burdens of a party shall bind and apply to any permitted successor in interest or assignee of the business and/or operations of a party.

29. Partial Invalidity. In the event that any portion of this Agreement or any provision hereof shall be deemed as invalid as contrary to applicable law, the balance of this Agreement shall be enforced according to its term, and that portion found unenforceable shall be interpreted and enforced to the extent that it may be within said applicable laws.

30. Disputes. This Agreement shall be construed and all disputes arising therefrom shall be settled in accordance with the laws of the State of California. Venue for any dispute arising under this Agreement shall be in Santa Barbara, California. Any controversy or claim arising out of or relating to this Agreement shall be resolved by binding arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then pertaining (available at www.adr.org), except where those rules conflict with this provision, in which case this provision controls. Any court with jurisdiction shall enforce this clause and enter judgment on any award. The arbitrator shall be selected within twenty business days from commencement of the arbitration from the AAA's National Roster of Arbitrators pursuant to agreement or through selection procedures administered by the AAA. Within 45 days of initiation of arbitration, the Parties shall reach agreement upon and thereafter follow procedures, including reasonable limits on discovery, assuring that the arbitration will be concluded and the award rendered within no more than eight months from selection of the arbitrator or, failing agreement, procedures meeting such time limits will be designed by the AAA and adhered to by the Parties. The arbitration shall be held in Santa Barbara, California and the arbitrator shall apply the substantive law of California, except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act. Prior to commencement of arbitration, emergency relief is available from any court to avoid irreparable harm. THE ARBITRATOR SHALL NOT AWARD EITHER PARTY PUNITIVE, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES. Prior to commencement of arbitration, however, the Parties must attempt to mediate their dispute using a professional mediator from AAA, the CPR Institute for Dispute Resolution, or like organization selected by agreement or, absent agreement, through selection procedures administered by the AAA. Within a period of 45 days after the request for mediation, the Parties agree to convene with the mediator, with business representatives present, for at least one session to attempt to resolve the matter. In no event will mediation delay commencement of the arbitration for more than 45 days absent agreement of the Parties or interfere with the availability of emergency relief.

31. Prohibited Interest. The parties hereto covenant and agree that to their knowledge no board member, officer, or employee of MTD, during his/her tenure or for one year thereafter, has any interest, whether contractual, non contractual, financial or otherwise, in this transaction, or in the business of a contracting party other than MTD. If any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other parties, even if such interest would not be considered a conflict of interest under Article 4, Chapter 1, Divisions 4 and 4.5, Title I of the Government Code of the State of California.

32. Compliance with Laws and Regulations. Contractor shall warrant that in the performance of work under contract to MTD that they shall comply with all applicable federal, state and local laws and ordinances, and all lawful orders, rules, and regulations thereunder.

33. Audit and Inspection of Records. The Contractor shall agree that all materials supplied and services performed under the Project, facilities used in connection therewith, and records and documentation thereunto appertaining shall be subject to inspection, test, or audit by duly authorized representatives of MTD and the State of California. The Contractor agrees to maintain all required records relating to the Project for at least three years after MTD makes final payment and all other pending matters are closed.

34. Equal Employment Opportunity. For applicable terms, refer to Paragraph 24 (Civil Rights Requirements) in *Federal Transit Administration: Contract Provisions* which is attached hereto as Exhibit "A".

35. Entire Agreement. This Agreement and its attached exhibits constitute the entire agreement between the parties and shall be deemed to supersede and cancel any and all previous representations, understandings, or agreements between MTD and Contractor as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties.

36. No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.

37. Counterparts & Email. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a scanned and emailed signature may substitute for and have the same legal effect as the original signature.

38. **Qualifications.** Contractor or Contractor's representative (Contractor) certifies that Contractor is qualified to do business and is in good standing in the State of California, and that Contractor has authority to enter into and perform its obligations under this Agreement, which constitutes a valid and binding obligation of Contractor.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed.

SANTA BARBARA MTD

[insert contractor name in caps]

Jerry Estrada, General Manager

[insert authorized official name & title]

Date

Date

DO NOT FILL IN OR SIGN

FEDERAL TRANSIT ADMINISTRATION CONTRACT PROVISIONS

Marketing Services - [Contractor Name]

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- 1. FLY AMERICA REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT**
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- 3. CHARTER BUS & SCHOOL BUS REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT**
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- 5. SEISMIC SAFETY REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT**
- 6. ENERGY CONSERVATION REQUIREMENTS**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The Contractor agrees to include the requirements of this section in all subcontracts.

- 7. CLEAN WATER REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT**
- 8. BUS TESTING—NOT APPLICABLE TO THIS CONTRACT**
- 9. PRE-AWARD & POST-DELIVERY AUDIT REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT**
- 10. LOBBYING—NOT APPLICABLE TO THIS CONTRACT**

The Contractor certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (b) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(c) The Contractor shall require that the language of this certification be included in the award documents for all subawards exceeding \$100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.] Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure.

[Note: The Contractor shall have previously submitted to MTD a separately signed Lobbying Certification containing the above language for itself and any subcontracts exceeding \$100,000 as a condition of contract award.]

11. ACCESS TO RECORDS & REPORTS

(a) The Contractor agrees to provide MTD, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(b) If contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to MTD, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(c) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(d) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until MTD, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

12. FEDERAL CHANGES

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between MTD and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

13. BONDING REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT**14. CLEAN AIR—NOT APPLICABLE TO THIS CONTRACT****15. RECYCLED PRODUCTS—NOT APPLICABLE TO THIS CONTRACT****16. DAVIS-BACON & COPELAND ANTI-KICKBACK ACTS—NOT APPLICABLE TO THIS CONTRACT****17. CONTRACT WORK HOURS & SAFETY STANDARDS ACT—NOT APPLICABLE TO THIS CONTRACT****18. [RESERVED]****19. NO GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

(a) MTD and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to MTD, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENTS & RELATED ACTS

a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or

affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. TERMINATION

(a) Termination for Convenience: MTD, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, MTD shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(b) Termination for Default

(1) If the Contractor fails to perform the services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, MTD may terminate this contract for default. MTD shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

(2) If this contract is terminated while the Contractor has possession of MTD goods, the Contractor shall, upon direction of MTD, protect and preserve the goods until surrendered to MTD or its agent. The Contractor and MTD shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

(3) If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of parties shall be the same as if the termination had been issued for the convenience of MTD.

22. GOVERNMENT-WIDE DEBARMENT & SUSPENSION—NOT APPLICABLE TO THIS CONTRACT

23. PRIVACY ACT

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. CIVIL RIGHTS REQUIREMENTS

(a) Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity: The following equal employment opportunity requirements apply to the underlying contract:

(1) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age: In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

25. BREACHES & DISPUTE RESOLUTION

Paragraph 30 of the *MTD Master Agreement* regarding disputes shall be deemed satisfactory to meet the federal requirements for dispute resolution. The Contractor agrees to include the requirements of said Paragraph 30 in all subcontracts

26. PATENT & RIGHTS IN DATA

(a) Rights in Data: This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(A) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(B) In accordance with 49 CFR § 18.34 and 49 CFR § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1

and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

- (i) Any subject data developed under that contract, whether or not a copyright has been obtained; and
- (ii) Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(C) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(D) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(E) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(F) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(G) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(b) Patent Rights: The following requirements apply to each contract involving experimental, developmental, or research work:

(1) If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS—NOT APPLICABLE TO THIS CONTRACT

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

(a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. MTD's overall goal for DBE participation is 2.9%. A separate contract goal has not been established for this procurement.

(b) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MTD deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

(c) The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(d) The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the MTD. In addition, the Contractor may not hold retainage from its subcontractors.

(e) Contractor must promptly notify MTD whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MTD.

29. [RESERVED]

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MTD requests which would cause MTD to be in violation of the FTA terms and conditions. The Contractor agrees to include the requirements of this section in all subcontracts.

31. DRUG & ALCOHOL TESTING—NOT APPLICABLE TO THIS CONTRACT

32. INTELLIGENT TRANSPORTATION SYSTEM (ITS)—NOT APPLICABLE TO THIS CONTRACT